



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: DECEMBER 13, 2022

IN THE MATTER OF:

Appeal Board No. 625762

PRESENT: MICHAEL T. GREASON, MEMBERS

In Appeal Board Nos. 625762, 625763, the claimant appeals from the decisions of the Administrative Law Judge filed September 7, 2022, which sustained the initial determinations, holding, effective June 28, 2021, that the wages paid to the claimant, a professional employee of an educational institution, cannot be used to establish a valid original claim during the period between two successive academic terms, on the basis that the claimant had reasonable assurance of performing services at the educational institution in the next academic term pursuant to Labor Law § 590 (10); and charging the claimant with

an overpayment of Federal Pandemic Unemployment Compensation of \$3000.00 recoverable pursuant to Section 2104 (f)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020 .

At the combined a telephone conference hearing before the Administrative Law Judge, there were no appearances.

Our review of the record reveals that the case should be remanded to hold a further hearing. On appeal, the claimant has indicated that he failed to appear at the last hearing because he did not receive a telephone call, and we note that there has been no confrontation between the parties. In the interest of justice, the Board has determined to provide the claimant a final opportunity to appear and testify and for confrontation between the parties.

The parties are directed to immediately contact the hearing section to arrange a review of the prior hearing transcripts held in this matter, namely on March 29, 2022, June 1, 2022, and September 7, 2022. The employer will produce

Victoria Clayton as a witness. The employer and the claimant shall be afforded the opportunity for mutual and respective cross-examination on the previous testimony, objection to all exhibits previously marked at the June 1, 2022, hearing, and any additional testimony they may wish to offer to complete the record.

The Judge will take all additional testimony and evidence necessary to complete the record and decide the issues.

The parties are on notice that this is the FINAL HEARING. No further hearings will be held due to a party's failure to appear. In this regard, the parties MUST verify the accuracy of their addresses telephone numbers as set forth on the hearing notice in advance of the scheduled hearing.

Now, based on all of the foregoing, it is

ORDERED, that the decision of the Administrative Law Judge be, and the same hereby is, rescinded; and it is further

ORDERED, that the case shall be, and the same hereby is, remanded to the Hearing Section to hold a hearing on the issues, ONLY, upon due notice to all parties and their representatives; and it is further

ORDERED, that the hearing shall be conducted so that there has been an opportunity for the above action to be taken, and, so that at the end of the hearing, all parties will have had a full and fair opportunity to be heard; and it is further

ORDERED, that an Administrative Law Judge shall render a new decision, on the issues, which shall be based on the entire record in this case, including the testimony and other evidence from the original and the remand hearings, and which shall contain appropriate findings of fact and conclusions of law.

MICHAEL T. GREASON, MEMBER